

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DERRICK BAILEY-BAKER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 24-720
)	Judge Nora Barry Fischer
OFFICER PASQUARELLI, and OFFICER)	Magistrate Judge Maureen P. Kelly
SARVER,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 19th day of March, 2025, upon consideration of the Report and Recommendation filed by United States Magistrate Judge Maureen P. Kelly on March 5, 2025, (Docket No. 11), recommending that the Motion to Dismiss filed by Defendants Officer Pasquarelli and Officer Sarver be denied and that the parties be directed to file a Stipulation regarding their apparent agreement that Plaintiff Derrick Bailey-Baker's § 1983 excessive force claim at Count I should be treated as arising under the Fourteenth Amendment, and indicating that objections were due within 14 days, Defendants' Objections filed on March 18, 2025, (Docket No. 12), wherein they argue that the § 1983 failure to intervene claim at Count II should be dismissed, Plaintiff's Response to said Objections filed on March 18, 2025, (Docket No. 13), and upon independent review of the record and de novo consideration of the Magistrate Judge's Report and Recommendation, (Docket No. 11), which is ADOPTED as the Opinion of this Court,

IT IS HEREBY ORDERED that Defendants' Objections [12] are OVERRULED, as the Court agrees with the Magistrate Judge that Plaintiff has pled sufficient facts to state plausible claims against both officers for failure to intervene in the alleged excessive force used by the other and it also appears that the parties' disputes as to whether either officer had a reasonable opportunity to intervene are fact intensive and better resolved upon a more fully developed record after discovery, *see El v. City of Pittsburgh*, 975 F.3d 327, 335 (3d Cir. 2020) ("[T]he duration of the incident is key to determining whether there was a reasonable opportunity" to intervene);

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss [5] is DENIED;

IT IS FURTHER ORDERED that counsel for the parties shall meet and confer and file a Stipulation regarding their agreement that Count I should be treated as arising under the Fourteenth Amendment by **March 26, 2025**;

IT IS FURTHER ORDERED that Defendants shall file their Answer by **April 2, 2025**; and,

FINALLY, IT IS ORDERED that this matter is referred back to Magistrate Judge Kelly for further pretrial proceedings.

s/ Nora Barry Fischer
Nora Barry Fischer
Senior U.S. District Judge

cc/ecf: All counsel of record.

United States Magistrate Maureen P. Kelly